



USAPDA



INTRO TO THE PDES/SENIOR ADJUDICATORS COURSE

TDRL

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Introduction to the PDES/Senior Adjudicators Course

TDRL

Session Objectives



- To know when placement on the TDRL is authorized.
- To know when conditions diagnosed while on the TDRL are ratable.
- To understand the statutory entitlements for return to a military status if found fit off the TDRL.



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Index of Slides (Omitting Title Page, Objectives, and Index)

- #4. Purpose of the TDRL
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- #10 - 11. PE
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TDRL Purpose



- Placement on the TDRL occurs when Soldier is qualified for permanent disability retirement (PDR) but the disability is not stable for rating purposes.
 - 20 years of service as computed under 10 USC 1208 (20 years of AD or 7200 points combined active and IDT-related service); or
 - Minimum 30 percent disability rating.
- A disability is considered “not stable” if the medical evidence indicates the level of severity will increase or decrease within the next five years to the degree that the disability rating will change.
- Amendment passed in 1985 to permit conditions that were permanent but not stable to be placed on the TDRL.
- Protects the interests of the Soldier and the Army.



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Disposition Facts



- Maximum tenure is five years.
- By law, Soldier must be evaluated at least every 18 months.
- By policy, no election to PEB findings if retained on the TDRL.
- Must maintain a minimum 30% level of rating or have 20 years of active or combined service (7200 points) to be retained on the TDRL.
- 1984 amendment allows TDRLs found fit to retire for length of service off the TDRL or be separated for nondisability reasons.
 - Ex: Two-time passover for promotion was pending REFRAD when placed on the TDRL.
- TDRL fits who retire for LOS off the TDRL must meet the time-in-grade requirements for their rank.



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Adjudication Points



- “Administrative Finality” applies to “LD” and “Presumption of Fitness” issues.
 - Can’t revisit.
- All medical conditions must be adjudicated during TDRL re-evaluation.
 - May be found fit for condition for which placed on the TDRL, but unfit SWOB for a condition incurred while on the TDRL.
- To compensate new diagnoses
 - New condition must have been caused by condition for which Soldier was placed on the TDRL; or
 - Evidence shows condition was unfitting at time member was placed on TDRL.
 - Natural progression of AD conditions from fit to unfit while on the TDRL is not compensable.
 - Ex: HIV positive progression to AIDS.
- Member has no election to PEB determination of retention on the TDRL.
- No provision in the law to recompute retired pay for changes in condition as reflected in the periodic re-examination when member is retained on the TDRL.
 - Accordingly, for retention on the TDRL, the DA Form 199 will not reflect changes in percentage.
 - Disability rating is adjusted at time of removal from the TDRL.



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Compensation Points



- Soldiers on the TDRL receive a minimum of 50% of their “retired pay base.”
- Time on the TDRL counts in computing level of basic pay.
- Time on the TDRL does not count for YOS.
- Time on the TDRL is not included in computing disability retired pay or length of service retirement.
- No provision in the law to adjust TDRL compensation while on the TDRL.



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Return to Duty



- A return to a duty status is with the consent of the member (10 USC 1211).
- "Consent" conflicts with the statutory service obligation.
 - If MSO has precedence, time on the TDRL counts toward it.
 - Legal issue on whether "subject to consent" negates any MSO.
- RA have statutory right to return to AD.
- USAR RC have the right to return to "Active Status" USAR, but not the right to return to a previous AD status, even if a member was on the Active Duty List or was in the Active Guard Reserve (AGR) program.
- ARNG can refuse to accept. If so, member has right to USAR "Active Status."



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LOS Retirement off the TDRL



- Members determined fit off the TDRL who meet the service requirements may be retired for LOS off the TDRL.
- PDA does the retirement order.
- Retirement grade is based upon the regulatory (enlisted) and statutory (officer) time in grade requirements for LOS retirement in that grade.



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PE: True/False



- _____ LTC with 23 years of active service is unfit for an unstable condition rated at 20%. By law he should be placed on the TDRL.
- _____ An unstable condition includes those that reflect changes in the level of severity, even when the change would not increase or decrease the rating.
- _____ Soldiers go on the TDRL only when they have a condition that may heal to the degree that would allow for a return to active duty or active status RC.
- _____ During the PEB evaluation of Soldier's periodic re-examination, PEB recommended that Soldier be retained on the TDRL. Soldier believes his condition is stable and submits an election of nonconcurrence. Soldier's action was appropriate under current regulation.
- _____ During the periodic re-evaluation, PEB realized that they erred in not applying the presumption of fitness rule at time of Soldier's initial PEB evaluation. They may now apply the rule.
- _____ During the periodic re-evaluation, PEB realized they erred in determining the member's condition was service-incurred. They can now make an finding of EPTS-no aggravation.



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TDRL

PE: True/False



- _____ Soldier went on the TDRL for a serious back condition that remained unstable as he approached this fifth year. At the time he went on the TDRL he was HIV positive serology only, which was found to be not unfitting. By the time of his final TDRL re-evaluation, the back condition remained unfitting and the HIV had developed to AIDS. The Soldier may be rated for the AIDS.
- _____ Soldier went on the TDRL for a disease that resolved. While on the TDRL, he was in a car wreck that left him with injuries. The next TDRL re-evaluation must make a fit/unfit finding on any diagnoses resulting from those injuries.
- _____ An officer with 20 years of active service was placed on the TDRL as an 06 with six-months service as a COL. At the time of his final TDRL exam, he was determined fit. He decided to request length of service retirement off the TDRL. He will be able to retire for length of service as an 06.



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PE: True/False Answer Key

- True. LTC with 23 years of active service is unfit for an unstable condition rated at 20%.
By law he should be placed on the TDRL.
Rationale: 10 USC 1201 states 30% or 20 years of 1208 service.
- False. An unstable condition includes those that reflect changes in the level of severity, even when the change would not increase or decrease the rating.
Rationale: Stability is defined in terms of whether the percentage will change.
- False. Soldiers go on the TDRL only when they have a condition that may heal to the degree that would allow for a return to active duty or active status RC.
Rationale: 1985 amendment clarified that TDRL was also for condition that may worsen.
- False. During the PEB evaluation of Soldier's periodic re-examination, PEB recommended that Soldier be retained on the TDRL. Soldier believes his condition is stable and submits an election of nonconcurrence. Soldier's action was appropriate under current regulation.
Rationale: Under current AR 635-40, there is no right of election to a retention finding since
status is not being changed.



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PE: True/False Answer Key

- False. During the periodic re-evaluation, PEB realized that they erred in not applying the presumption of fitness rule at time of Soldier's initial PEB evaluation. They may now apply the rule.
Rationale: Doctrine of administrative finality precludes revisiting the issue.
- False. During the periodic re-evaluation, PEB realized they erred in determining the member's condition was service-incurred. They can now make an finding of EPTS-no aggravation.
Rationale: Unless there is a change in diagnosis to a condition that accepted medical principles makes "pre-existing," doctrine of administrative finality precludes re-visiting the issue.
- False. Soldier went on the TDRL for a serious back condition that remained unstable as he approached this fifth year. At the time he went on the TDRL he was HIV positive serology only, which was found to be not unfitting. By the time of his final TDRL re-evaluation, the back condition remained unfitting and the HIV had developed to AIDS. The Soldier may be rated for the AIDS.
Rationale: Not compensable because it was not unfitting when placed on the TDRL. It progressed to unfitness while Soldier was in a non "active" status.



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PE: True/False Answer Key

- True. Soldier went on the TDRL for a disease that resolved. While on the TDRL, he was in a car wreck that left him with injuries. The next TDRL re-evaluation must make a fit/unfit finding on any diagnoses resulting from those injuries.

Rationale: Findings of fit/unfit must be made on all diagnoses manifesting at the time of the TDRL re-evaluation.

- False. An officer with 20 years of active service was placed on the TDRL as an 06 with six-months service as a COL. At the time of his final TDRL exam, he was determined fit. He decided to request length of service retirement off the TDRL. He will be able to retire for length of service as an 06.

Rationale. There is no time in grade requirement for PDR or TDRL. There is for LOS retirement.

- PDR or TDRL is at the higher of current grade, highest grade satisfactorily held, or promotion list grade.